

BANKRUPTCY LAW NEWSLETTER

Published by the Federal Bar Association
Western District of Michigan Chapter

December, 1997



SUPREME COURT TO HEAR ARGUMENTS IN TWO SIGNIFICANT BANKRUPTCY RELATED CASES.

The United States Supreme Court has scheduled oral arguments in January for two bankruptcy-related cases.

On January 20, 1998, oral argument is scheduled in the case of Cohen v Cruz, Case No. 96-1923. In this case the Third Circuit affirmed a decision holding that punitive as well as compensatory damages for fraud are non-dischargeable under Section 523(a)(2)(A). The Court found that the definition of "debt" was broad enough to encompass punitive damages, and that

public policy should not shelter a dishonest debtor from the consequences of his or her dishonesty.

In Kawaauhau v. Geiger, No. 97-115, to be argued on January 21, 1998, the Supreme Court will review an en banc decision of the Eighth Circuit regarding the dischargeability of a medical malpractice judgment. The Eighth Circuit held the debt was subject to the discharge because no intentional tort was involved. While the doctor's actions may have been reckless, the resulting injury was not a debt for "willful" injury under Section 523(a)(6).



FROM THE COURT

By: Mark VanAllsburg

CHANGES TO THE BANKRUPTCY FEE SCHEDULE:

The Judicial Conference has approved several changes to the Bankruptcy Fee Schedule (See 28 USC 1930(b)). Here is a brief summary of the changes which will most greatly affect the bankruptcy bar [the item numbers correspond to the numbering in the new schedule]:

ITEM 2: The fee for certification of a document remains \$5.00 but the fee for **exemplification** of a document has been increased to \$10.00. Exemplification is a medieval procedure in which a copy of a court document is attached to an affidavit which is signed by the clerk [who states that he/she is really the clerk], is then signed by a judge of the court [who states that the clerk is really the clerk], and is then signed by the clerk again [who states that the judge is really the judge]. Exemplified documents are sometimes required by state courts in order to register judgments in the state court. Certification usually suffices for official copies.

ITEM 4: The amendment fee of \$20.00 has not changed, but the provision which makes this fee applicable only "after notice to creditors" has been deleted. In the past, persons amending lists of creditors and schedules were only charged if the first meeting notice had already been sent (which was in

99% of the cases). Now the amendment fee will always be due.

ITEM 8: The administrative fee of \$30.00 will now be applicable to all chapters including 11 and 9. The fee will also apply to involuntary cases and will be paid by the petitioning creditors. After January 1, the court will no longer bill for any notice fees in either future or pending cases.

ITEM 9: The fee for reopening a case has been given the item number of a fee which has been eliminated. The fee remains the same as the filing fee for filing a bankruptcy case under 28 USC 1930(a) and the fee may be waived in certain circumstances. However, new language has been added to this section which states that "The court may waive this fee under appropriate circumstances or may defer payments of the fee from trustees pending discovery of additional assets." This change will assist trustees who wish to reopen cases to administer newly discovered assets but are unsure whether they will ultimately make a recovery. In the past, the trustees were required to pay the fee from personal funds.

ITEM 21: The \$60.00 fee for filing a motion for relief from stay, a motion to compel abandonment, or a motion to withdraw reference has been changed to ½ the filing fee to institute a civil action (28 USC 1914(a)). This fee is currently \$150.00 which effectively raises the motion fee to \$75.00.

**CONTRACTUAL AGREEMENT
REGARDING VENUE FOR FUTURE
CAUSES OF ACTION IS NOT
ENFORCEABLE.**

In a recent case, the Michigan Court of Appeals has held that a contractual agreement establishing venue for future causes of action is not enforceable.

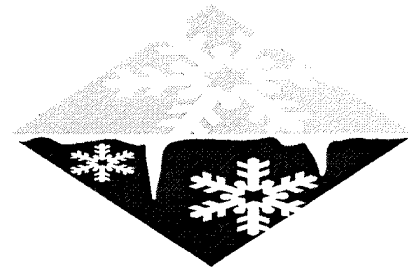
In Omne Financial, Inc. v Shacks, Inc. and Lee Shacks, Jr., 1997 Mich App Lexis 381 (decided November 14, 1997), the Defendant entered into a lease for two jukeboxes and two pool tables. A portion of the lease provided that venue for any cause of action arising out of the lease would be in Oakland County. The Defendants and the leased equipment resided in Saginaw County. Plaintiff brought suit in Oakland County for damages based on non-payment and for return of the leased property. Defendants filed a motion to change venue. The trial court denied the Defendants' motion, and appeal by leave was granted.

The Michigan venue statute for actions to recover personal property, MCLA 600.1605, MSA 27A.1605, indicates that venue is proper in the county where the subject matter is situated, i.e. Saginaw County, is the proper county in which to commence the action. Despite the contractual agreement in the lease to provide for venue in Oakland County, the Court of Appeals declined to adopt a rule which would allow parties to contractually agree to venue. The Court based its ruling on its belief that this was a matter more properly left to the legislation, and that enforcing this contractual provision would conflict with

existing court rules. The Court did note, however, that objections to venue are waived if not raised in a timely manner.

**** 1998 FBA SEMINAR ****

We are all making plans to be at the 1998 Bankruptcy Seminar, scheduled for July 30 through August 1 at the Park Place Hotel in Traverse City. *If anyone has any ideas on topics that they think would be interesting, please contact any of the members of the Seminar Committee:* Judy Walton, 99 Monroe Ave., NW, P.O. Box 360, Grand Rapids, MI 49501-0360, 616-732-5000; Peter Teholiz, 5801 W. Michigan Ave., P.O., Box 80857, Lansing, MI 48908-0857, 517-886-7176; Honorable Jo Ann Stevenson, 110 Michigan Ave., NW, P.O. Box 3310, Grand Rapids, MI 49501, 616-456-2949. Or if anyone has an interest in being a speaker, please let one of us know. With your help, we can make this a memorable and educational event!



EDITOR'S NOTE:

I apologize for the delay in your receiving the December issue of the Newsletter. I resolve in 1998 to be more timely with the publication. You could assist me with that goal by submitting articles, opinions or other items of interest to me at Donovan, Love & Twinney, 509 Waters Building, Grand Rapids, MI 49503, or by fax at 616-454-9191. Best wishes for the New Year.

-Mike

LOCAL BANKRUPTCY STATISTICS

CHAPTER	NOVEMBER 1997	YTD - 1997
Chapter 7	691	7,559
Chapter 11	4	70
Chapter 12	1	12
Chapter 13	234	2,777
TOTALS	930	10,418 *

* This is the first time this Bankruptcy Court has hit 10,000 filings!!

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